

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

PETS ALONE SANCTUARY OF LINCOLN COUNTY,

PLAINTIFFS,

v.

MIDWEST FAMILY MUTUAL INSURANCE COMPANY

DEFENDANTS.

Civil Action No. _____

Removed from:

THE CIRCUIT COURT OF
ST. LOUIS COUNTY MISSOURI

CASE NO. 22SL-CC02987

JURY TRIAL DEMANDED

NOTICE OF REMOVAL OF CIVIL ACTION

TO PLAINTIFF AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendant Midwest Family Mutual Insurance Company (“Midwest Family”) hereby notices the removal of this civil action to the United States District Court for the Eastern District of Missouri from the Circuit Court Of St. Louis County, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, **on the basis of diversity jurisdiction.** The grounds for removal are stated as follows:

1. On June 20, 2022, Plaintiff Pets Alone Sanctuary of Lincoln County filed their Petition in the Circuit Court Of St. Louis County Missouri. A copy of the Petition, along with all other documents that have been filed in this action, is attached hereto as Exhibit 1.
2. Plaintiff purports to have served Defendant Midwest Family through the Missouri Director of Insurance on June 24, 2022, making this Removal timely pursuant to 28 U.S.C. § 1446(b).
3. Plaintiff Pets Alone Sanctuary of Lincoln County alleges Defendant breached the insurance contract between Plaintiff and Defendant by “failing to provide a full and complete defense to the Counterclaims asserted in the litigation” (Pet. ¶35), and also “breached its duty to

act in good faith regarding settlement of the Counterclaims” asserted against Plaintiff (Pet ¶ 35).

4. Plaintiff Pets Alone Sanctuary of Lincoln County alleges that it is “a Missouri non-profit corporation with a principal place of business in Lincoln County, Missouri”. (Pet. ¶ 1).

5. Plaintiff also recognizes Defendant “is a mutual insurance company domiciled in the State of Iowa”, (Pet. ¶ 2); not a citizen of Missouri.

6. At the time Plaintiff filed its Petition and at the date of this Removal, Plaintiff and Defendant are of diverse citizenship, and Defendant is not a citizen of Missouri.

7. Plaintiffs assert it “has been damaged in the amount that it had to pay to settle the [lawsuit against it] and interest accruing on that amount”, along with its attorneys’ fees. (Pet. ¶ 37, 39).

8. While, in its Petition, Plaintiff failed to assert the amount it allegedly paid in the settlement, Plaintiff has submitted a demand to Defendant for this alleged damage in excess of \$75,000.00.

9. Removal is proper under 28 U.S.C. § 1332 because Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.00.

10. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 4.02, removal to the United States District Court for the Eastern District of Missouri is proper because this is the federal district court for the district and division embracing the place where the state court suit is pending, as well as the state court of proper venue¹.

11. This Notice of Removal is being filed within thirty days of receipt by Defendant of information from which it could first ascertain that the case is removable, pursuant to 28 U.S.C. § 1446(b).

¹ Defendant reserves the right to assert improper venue if this matter is remanded and does not waive its objection to venue. However, because both the venue where the lawsuit was filed and the proper venue are within the Eastern District of Missouri, the issue of proper venue is not relevant to the removal and, therefore, is reserved and to be addressed in the state court only if this matter is remanded.

12. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be given to Plaintiff, and a copy of this Notice of Removal will be filed with the Circuit Court of St. Louis County, State of Missouri, to complete the removal of this civil action. Exhibit 2.

13. As required by 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders served upon Midwest Family are being filed with this Notice of Removal, as Exhibit 1.

14. In filing this Notice of Removal, Midwest Family reserves all substantive and procedural claims, counterclaims and defenses, including but not limited to defenses respecting service of process, venue, and personal jurisdiction, as well as filing a motion to dismiss.

15. There is no other defendant in this matter; no consent of or notice to any other defendant is needed.

WHEREFORE, Midwest Family Mutual Insurance Company respectfully requests that all proceedings in the state court action be discontinued, and that this action proceed in the United States District Court for the Eastern District of Missouri as an action properly removed to it.

Dated: July 22, 2022

Respectfully submitted,

SWANSON BERNARD, LLC

/s/ Daniel N. Allmayer

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*Attorneys for Defendant Midwest Family Mutual
Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd of July, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and I hereby certify that I have mailed by United States Postal Service the document to:

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ATTORNEYS FOR PLAINTIFF

/s/ Daniel N. Allmayer_____